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INTERNATIONAL REGULATIONS OF THE FISHERIES ON THE HIGH SEAS * * * * *

From BULLETIN OF THE BUREAU OF FISHERIES, Volume XXVIII, 1908

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ON THE HIGH SEAS



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Fisheries, London, England*



Paper presented before the Fourth International Fishery Congress,
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By CHARLES EDWARD FRYER, I. S. O., F. L. S.,
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PRIVILEGES AND CLAIMS OF THE FLAG.

The same principle by which the protection of the flag of its proper nationality is afforded to a vessel on the high seas beyond the territorial limits of its country requires that vessel to comply with all the laws of its country, whether applicable within or beyond territorial limits, and it is as much within the competence of any power to impose restrictions on fishing operations carried on by vessels flying its flag in any part of the world, outside of the territorial waters of other nations, as it is to regulate the fisheries within its own rivers and elsewhere within its domain. But however admirable or necessary such restrictions might be, they would necessarily apply only to the subjects or citizens of the particular State that enacted them, and could not be enforced against aliens except by consent. In cases, therefore, where the fisheries prosecuted in extraterritorial waters were shared in by fishermen of other states, great hardship would result unless by international agreement the same regulations were made applicable to all fishermen alike, of whatever nationality.

NECESSITY FOR COMBINED ACTION.

The hardship thus involved recently received curious illustration in the effects of a self-denying ordinance which the herring and mackerel fishermen of the county of Cornwall (England) imposed upon themselves in the matter of Sunday fishing. For various reasons, partly religious, partly social, partly economic, the Cornishmen agreed to regard Sunday as a day of rest from fishing and to discountenance not only fishing operations, but also the task of departure for or return to the fishing grounds on the Sabbath day.

This understanding was loyally adhered to until the advent of large numbers of competitors from east-coast ports, who, making Cornish harbors their temporary headquarters, sought to gather in the harvest of the sea as quickly as possible. Not being actuated by the same scruples as the west-country folk, and not being in any way parties to the understanding, the newcomers did not feel

themselves called upon to abstain from Sunday fishing; and, notwithstanding all appeals, they declined to discontinue their labors on the Sabbath. So much resentment was engendered among the Cornishmen that, not being inclined to surrender their principles, but having no lawful means of imposing them on their visitors, they had recourse to acts of violence, and considerable rioting was the consequence. In the absence of laws to the contrary the east-country boats were, of course, as much entitled to fish on Sunday as the west-country boats were to abstain; and, short of mutual agreement, the only way of settling the dispute would have been to pass a law making Sunday fishing illegal on the part of all British subjects, at any rate in the particular portions of the sea in respect to which the trouble had arisen. But while this would, so far, have ended the controversy as between British subjects, it would have resulted in a possibly greater grievance and a certainly greater anomaly, since the waters in question are frequented by both British and foreign fishermen. It was one thing for the Cornishman voluntarily to abstain from fishing on Sunday and to leave the ground free to such of his foreign rivals as chose to fish there in his absence—especially seeing that the fish so caught were not brought into the Cornish markets, but it would have been quite another thing to compel the east-country fisherman to desist from catching fish which he was anxious to catch, while the foreigner was under no such disability—especially seeing that it was not pretended that the prohibition of Sunday fishing would have benefited the fisheries as a whole. Without in any way going into the merits of the dispute, it is obvious that no form of compulsion in this case would have been tolerable, if effective, which was not of universal application, and this could be brought about only by the common consent of all the States whose fishermen frequented the grounds in question.

MAIN OBJECTS OF INTERNATIONAL REGULATIONS.

It seems obvious that, in waters in which the fishermen of any considerable number of different nationalities are largely concerned in fishing at the same time, not only will there be the greatest necessity for international agreement and regulation, but there must exist the greatest diversity of interest, and the greatest difficulty will be encountered in devising rules that will be mutually acceptable. It is therefore, perhaps, not out of place to consider what have been the history, objects, and results of such international regulations as have been framed for waters which answer most fully to the above description.

In none of the seas of the world are such extensive and diverse fishing operations carried on at the same time by so large a number of fishermen, of so many various nationalities as in the extraterritorial waters of the English Channel and the North Sea or German Ocean. Prolific of fish in great variety and of the finest quality, and easily accessible to vessels of all sizes belonging to at least eight different powers of western Europe whose shores it washes,

the North Sea in particular has for centuries been the resort of an ever-increasing number of fishing craft of different nationalities; and, with an ever-growing demand for the product of their industry, and with the increasing power and size of their vessels, especially since the introduction of steam, not only have the fishermen been brought into closer and more frequent contact with each other, over wider areas, but the opportunities, if not the need, for interchange of commodities between them have also been enlarged. It is natural, therefore, that we should find in the case of the North Sea fisheries a greater diversity than elsewhere of purposes for which international regulations have been called for in relation to the better government, more orderly conduct, and greater prosperity of those engaged in their prosecution.

The main objects toward which the regulations of this character have been directed have been fourfold: (1) The protection or further development of the fishing industry, as such; (2) the protection of the gear of the fishermen against injury; (3) the maintenance of law and order among fishermen; (4) the greater security of the lives and persons of the fishermen. These objects are, almost of necessity, the same as those which are aimed at in all fishery legislation, whether in inland waters or elsewhere, but their relative importance is practically reversed in the case of fisheries on the high seas as contrasted with what may be called the "domestic" or "national" fisheries. In the latter case, and more particularly in regard to river fisheries, not only are the effects of overfishing more readily made manifest, and the necessity for protection recognized, but the national laws, whether for the development of the particular industry or for the security of the property involved, are more easily enforced against all persons alike than in extraterritorial waters where differences of custom, of methods, of laws, and of language—to say nothing of interests—bring about unavoidable complications. Two nations whose fishermen practice different methods of fishing for the same kind of fish will not always admit that the same necessity exists for its protection or that the same remedy is the appropriate one. Each class of fishermen will probably attribute mischief to the method of fishing adopted by the others, and the mutual jealousies which exist between, for example, the seiners and the drifters, or the trawlers and the line fishermen, of the same nation—each attributing to the acts of the other any falling off in the productiveness of the fisheries—are intensified when to difference of method is added difference of race. Hence the cases are rare in which international agreement has been arrived at with respect to regulations aimed directly at the protection of fish against overfishing, alleged or real, on the high seas.

The instances of the conventions between the United States and Canada for the preservation of the fisheries of the Great Lakes, or of the agreements between Germany, Holland, and Switzerland with respect to the salmon fisheries of the Rhine, are not appropriate to the present essay, since they relate to inland waters in which no extraterritorial rights are admitted, and not to the high

seas.^a Perhaps the most prominent instance of the kind in which international regulations were directed to the protection from threatened extermination of a marine animal is that of the treaty dealing with the seal fisheries of Bering Sea.

SEAL FISHERIES.

It may be objected that, although the pursuit of the seal is popularly classed under the head of "fisheries," the seal itself is not a "fish" and does not therefore properly come within the purview of this essay. But a reference to the case is at least admissible on the ground that it serves to bring into prominence the fact already alluded to that international agreements for the protection of fish from overfishing are conspicuously rare in the case of the high seas.

The difficulty of proving the existence and effect of overfishing in the case of fisheries on the high seas is generally recognized; the movements of the fish are not easily traced, the causes of those movements are often unknown, and the direct effect of man's operations, either in influencing those movements or in reducing the available supply of fish, is generally a matter of inference from insufficient data and incapable of proof. But in the case of the seal we are dealing with an animal whose movements at the most critical periods of its career are open to view and easily observed; whose numbers are capable of ascertainment by means of a census sufficiently accurate for all practical purposes; and on whose destruction a definite limit could be set without serious difficulty. It was therefore comparatively easy in this case to bring home to all the powers interested the necessity for measures of protection and then to induce them to agree on the most obvious restrictions. Whether those restrictions will prove in all respects sufficient for their purpose is a question which only further experience can finally answer, but their promise of success is sufficient to encourage the hope that the end in view will be achieved, and furthermore that the increase of knowledge as to the habits of fish and as to man's influence upon them will be made the basis of any analogous steps that may be proposed for international action toward the prevention of overfishing in the case of fish properly so-called.

It may be interesting to note, in this connection, that thirty years ago, by agreement between the United Kingdom and the Scandinavian powers interested in the seal fisheries of Greenland, the killing of seals on and near the coasts of that country was prohibited in any season until a date at which it was estimated that the young cubs would be able to provide for themselves, and it is believed that the supply of seals in the waters in question has considerably increased in consequence.

^a The omission from this essay of any reference to the international regulations relating to the fisheries carried on in common by the fishermen of the United States, Canada, and Newfoundland is just fied on the ground that some of the questions involved are the subject of pending diplomatic negotiations between the powers concerned.

OYSTER FISHERIES OF THE ENGLISH CHANNEL.

The earliest instance of an international agreement for the enforcement of a regulation directed toward the protection of seafish from overfishing occurs in connection with a convention entered into between the United Kingdom and France in 1839, under which regulations were mutually agreed upon for the better ordering of the fisheries carried on by the subjects of those two states in the English Channel. Here, again, the object of the solicitude of the two powers was not a "fish" in the true sense of the word, but a mollusk, namely, the oyster. Here, also, the condition precedent existed that it was comparatively easy to secure adequate evidence of the necessity for some protection against overfishing. This protection took the form of a regulation forbidding the removal of oysters measuring less than $2\frac{1}{2}$ inches across the shell, and of a close season of four months, during which oyster-dredging was forbidden in the extraterritorial waters of the English Channel, while, later on, it was provided that oyster dredges should not be carried on board the fishing boats of either country during the prohibited period, unless kept duly secured by seals affixed by a competent official. The dates fixed for the close season, however, were not altogether the most appropriate, and, by a later convention arranged in 1867 between the two countries, it was agreed that the period should be altered. This latter convention was never ratified by France, and, although England took the necessary steps to give effect to it, it has never been fully put into operation, but the close season for oysters as then determined is maintained by special agreement renewed from year to year.

OTHER ANGLO-FRENCH CONVENTIONS.

By far the greater part of both these Anglo-French conventions, as well as the whole of the more recent conventions relating to the fisheries of the North Sea, deals with the several points included under the heads—other than the protection of fish—into which the objects in view have been divided; and, although international regulations with respect to overfishing are rare, there are numerous instances in which the regulations have dealt with the protection of the fishermen themselves in either their persons, their morals, or their property.

Both the Anglo-French conventions above referred to made provision for identification marks being affixed to fishing boats operating within the English Channel, for keeping certain classes of fishermen as far as practicable apart, so as to minimize the risk of damage or conflict, and for establishing a system of international sea-police for the proper enforcement of the regulations. The great development of fishing operations in the last few years has, apart from other considerations into which it is unnecessary to enter here, rendered obsolete the greater part of the regulations thus agreed upon, and negotiations are now in progress between the two countries for a new convention on wider and more modern lines and more fitted to existing conditions.

NORTH SEA REGULATIONS

In the meantime a separate series of enactments applicable to the North Sea has been put in force, dealing with a wider range of subjects than were contemplated either in 1839 or in 1867. None of these enactments, however, affects the question of overfishing. They deal with the human aspects of the question only. And, curiously enough, one of the earliest of them was brought about, not by overintensity of rivalry between competing fishermen, leading to acts of hostility, but by undue familiarity based on mistaken notions of friendship and resulting in abuses of a social and moral nature which called for interference.

Out of a system of exchange and barter, at sea, of fish, clothing, and other commodities, there had grown up a practice of sending among the fishing fleets in the North Sea a number of vessels, known as "coopers," specially fitted for the supply of intoxicating liquors, which found a market among certain of the fishermen, being sold for money where cash was available, or exchanged for fish or other articles. Such opportunities were especially frequent in the case of the trawling vessels fishing on what is known as the "fleeting" system. Instead of returning to port after each fishing trip the boats of certain companies fish together on a given ground, where they are visited day by day by specially fitted "carriers" or "cutters" which go the round of the fleet, collect the whole catch, and straightway steam back to deliver it in the fish market, returning again to the fleet and repeating these operations as long as fish remain sufficiently plentiful on the ground. In this way a fleet of trawlers may remain at sea for considerable periods, and in these and other circumstances, due to the development of the industry, the facilities for surreptitious traffic in drink not only led to the fishermen being exposed to great temptation to dishonesty, but conduced to scenes of drunkenness, to acts of violence, to neglect of duty, to insubordination, and to danger and disaster in which other and innocent persons were frequently involved.

The result of all this was a convention between the United Kingdom and certain neighboring powers known as the North Sea Liquor Traffic Convention of 1889, whereby heavy penalties were imposed on any persons supplying intoxicants or tobacco to fishing vessels, except under license from the duly constituted authorities. In practice the issue of these licenses is limited to a few vessels employed as "mission" or "hospital" ships in connection with the trawling fleets, whose visits afford sufficient opportunity for the supply of such liquors as are needed for medicinal and other legitimate purposes. The consequence has been the entire disappearance of the "coopers" and the almost total abolition of the evils which followed in the train of their misdirected enterprise.

Equally satisfactory results have followed on the adoption of other international regulations, for the repression of acts of unprovoked injury to fishing

gear on the high seas, under a convention in which the powers bordering on the North Sea are again concerned jointly, so far as regards that part of the ocean.

In or about the year 1882, very serious complaints were made by British drift-net fishermen in the North Sea that it was the practice of certain foreign trawlers, chiefly Belgian, deliberately to cut through any drift nets that they might encounter and so clear a way for their trawl, continuing on their course without waiting to haul their gear and disentangle the net which they had fouled. For this purpose they carried a specially constructed iron implement, which got to be known as the "Belgian devil," shaped like a three or four pronged grapnel of considerable size, the inner sides of whose prongs or arms were furnished with cutting edges, and which they carried suspended in the water at such a depth that it automatically caught the footrope of the drift net, gathered the net in a loop, and severed it by the mere action of the trawl boat sailing, or steaming, on its course. A committee of inquiry found these complaints to be well founded and the result was an international convention forbidding the use or possession of any such engine for any such purpose under heavy penalties, and the "Belgian devil" has now entirely disappeared from the North Sea.

Abuses of such kinds as either of those just alluded to will, it may be hoped, be rare, but whenever they occur it may be expected that public opinion, in all countries, will readily support decisive and prompt conjoint action for their suppression. It will, however, be always more necessary and more difficult to deal with those other and constantly recurring cases of unavoidable collision, more or less serious, between the boats and the gear of men lawfully and peacefully pursuing their various avocations, with different kinds of engines, in the same waters.

Wherever fishermen are attracted in large numbers to the same fishing grounds, there is always risk of damage from such a cause. In the North Sea alone, such diverse methods of fishing as trawling, seining in various forms, drifting and lining—not to mention other and less important modes—are employed at the same time within a comparatively narrow area, and often for the same kind of fish; and it may easily happen that, with the best intentions in the world, and with every desire to avoid all cause of conflict or dispute, the trawler may foul the nets of the drifter or the lines of the line-fisherman, or the drifter and trawler alike may disturb the seiner.

To minimize such possibilities the International Code of Navigation Laws and of regulations for the lights at sea to be carried by fishing boats at night has done something, and so long as those regulations are observed it is comparatively easy for one boat to avoid collision with another or with its gear. But, even so, occasional collisions are inevitable unless specified areas are set apart on which only one mode of fishing is permitted at one time. Even such a remedy as this would not remove all possibility of collision between boats of

the same kind, and there is the further objection that the reservation of particular areas to particular classes of vessels would involve great difficulty and expense in watching. It is clear, therefore, that after minimizing as far as possible the opportunities of collision by a well-considered system of signals, the next step is to minimize the damage resulting from inevitable casualties and to provide for the restoration of the damaged gear to the owners and for payment of compensation for the injuries inflicted.

With these objects in view the several powers bordering on the North Sea have entered into a series of conventions under which a fairly comprehensive code of regulations has been adopted, providing for the following matters:

(1) The clear delimitation of the areas within which the joint regulations were to apply.

(2) The adoption of easily recognizable marks of identification for both boats and gear.

(3) The protection of a vessel already engaged in fishing from undue interference by another boat arriving on the fishing grounds later.

(4) Provision for the restoration to the owner of gear accidentally carried away or picked up at sea.

(5) Provision for the prosecution of claims for compensation for damage in default of agreement.

(6) The assessment and recovery of damages duly adjudged.

(7) The prohibition of willful damage and enforcement of due diligence and care in releasing gear accidentally fouled.

(8) The enforcement of the regulations by the national vessels of all the contracting powers, with right of arrest in case of necessity.

RESULTS ACHIEVED.

A quarter of a century's experience of the working of this convention—while showing that it is incomplete in many details and is capable of improvement in order to fit it to deal adequately with the changing conditions of the fishing industry—has demonstrated that, given a frank recognition of equal rights, it is possible so to harmonize the apparently conflicting interests of different classes of fishermen, belonging to different nationalities that a spirit of mutual forbearance will take the place of jealousy, ill feeling, and suspicion, and law and order will supplant violence and outrage. In this connection, two conclusions present themselves: (1) That these results can only be obtained by the assertion of the superior force of authority and (2) that a very slight display of the resources of duly constituted government power is sufficient to secure the observance of the regulations. In the absence of such show of authority, however, there will always be men, who, however familiar with the law, and however much accustomed to its observance wherever there is provision for its enforcement, will seize

any opportunity of breaking it with impunity. The spirit underlying the conventions between Great Britain and France as regards the English Channel on the one hand, and between Great Britain and other powers as regards the North Sea on the other, is precisely the same, namely, a desire to secure to the subjects of each separate state the same protection from injury on the high seas that they would expect within the territorial domain of their respective governments. But the machinery for giving effect to this spirit is less complete in the case of the earlier conventions, and the result is that the same men who in the North Sea are careful to observe the law are apt to disregard its principles as soon as they cross the line which divides the North Sea from the English Channel, and as long as they are outside the line which separates territorial from nonterritorial waters.

The moral of this appears to be that, once the authorities are agreed that good cause for interference exists, it is easy to take and to enforce the necessary measures provided they are based on the generally accepted principles of law, order, and morality, and as long as they are founded on sufficient evidence as to the habits of fish and the effect of man's operations. Differences in legal procedure and practice involve a certain amount of difficulty, but in the cases above quoted this has been practically overcome by providing that a person charged with an offense shall be tried in the courts of the country to which he belongs, whatever the nationality of the officer arresting him. In this way mutual confidence in the sincerity of the authorities of the various contracting powers has been inspired; and with increasing evidence of a determination to maintain the ordinary principles of justice and right there have been displayed on the part of the fishermen themselves both a more general appreciation of the value of international regulations and also a sense of the greater security with which they can carry on their industry further and further afield—and this, after all, is only one indication of the increasing prosperity of the industry, which it is the ultimate aim and object of all such regulations to secure.

INCREASING NEED FOR INTERNATIONAL AGREEMENT.

Nevertheless, the greater the success of such regulations in this direction the greater is the variety of other interests involved. The further afield the fishermen of any State go, the more certainly will they be brought into closer relations with the fishermen of fresh nationalities, and the longer will be the list of States which find that they have interests in common—interests which will, sooner or later, call for combined action in the direction of international regulation of the fisheries on the high seas. Whether such regulations should aim at the protection of the fishermen—either in their lives, their property, or their morals—or at the protection of the fisheries against overfishing must depend on circumstances. So far as experience goes, the first object is the one most likely both

to claim attention and to make good its claim. It is far easier to prove that the lives or property of fishermen are in danger than it is to establish any connection between the fishing operations of the fishing fleets and the fluctuations in the yield of the fisheries, especially in the deep seas; and, as a preliminary to any effective steps for the protection of the fisheries on the high seas by way of international regulations, it will be found necessary to provide for international agreement as to the nature and extent of the statistical records to be kept and as to the method and scope of research into those natural phenomena which affect the productiveness of such fisheries more extensively than the combined operations of all the fishing fleets.

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